

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

IN RE: )  
 )  
John David Colson and ) Case No. 98-51588C-7W  
Carol Lynn Hinson Colson, )  
 )  
Debtors. )  
\_\_\_\_\_)  
 )  
Edwin H. Ferguson, Jr., )  
Trustee in Bankruptcy for )  
John David Colson, )  
 )  
Plaintiff, )  
 )  
v. ) Adversary No. 99-6018  
 )  
John David Colson and )  
General Board of Pension )  
and Health Benefits of the )  
United Methodist Church, )  
 )  
Defendants. )  
 )

ENTERED

MAY 31 '00

U.S. Bankruptcy Court  
Winston-Salem, NC  
TRD

MEMORANDUM OPINION

This adversary proceeding came before the court on April 13, 2000, for hearing upon plaintiff's motion for summary judgment. Thomas W. Waldrep, Jr., and Daniel C. Bruton appeared on behalf of the plaintiff, Gene B. Tarr appeared on behalf of defendant General Board of Pension and Health Benefits of the United Methodist Church and Steven F. Blalock appeared on behalf of defendant, John David Colson.

## NATURE OF CONTROVERSY

The plaintiff ("the Trustee"), as trustee of the bankruptcy estate of defendant John David Colson ("the Debtor"), seeks to recover from the General Board of Pension and Health Benefits of the United Methodist Church ("the Pension Board") Debtor's interests in two church retirement plans of the United Methodist Church.

## FACTS

On the petition date, the Debtor in the present case was a participant in the Ministerial Pension Plan, a church pension plan for clergy associated with a jurisdictional conference of the United Methodist Church (the "MPP Plan") and a Personal Investment Plan, a church retirement plan of the United Methodist Church (the "PIP Plan"). Both the MPP Plan and the PIP Plan are church plans as defined in 29 U.S.C. § 1002(33) and § 414(e) of the Internal Revenue Code and neither of the Plans is subject to the requirements of ERISA pursuant to 29 U.S.C. § 1003(b)(2). The MPP Plan in the present case contains a choice of law provision adopting the law of Illinois. The PIP Plan contains an antialienation clause similar to the one contained in the MPP Plan, which provides that no benefits payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer,

pledge, attachment, garnishment, or encumbrance of any kind and that any attempt to alienate, sell, transfer, assign, or otherwise encumber such benefit, whether presently or thereafter payable, shall be void. Both the MPP Plan and PIP Plan involved in the present case qualify as retirement plans under Illinois Revised Statutes, Chapter 110, Section 12-1006. On the petition date in the present case, the Debtor was an active minister in the United Methodist Church and was not receiving, nor was he entitled to receive, any benefits payable under either Plan. The Debtor's employment had not been terminated, and he had not retired nor was the Debtor disabled.

The present case is a companion case with the case of Bruce Magers, Trustee in Bankruptcy for Caren Colene Bigelow v. Caren Colene Bigelow and General Board of Pension and Health Benefits of the United Methodist Church (Adversary No. 99-6002) and was heard at the same time as the Bigelow case. Because there are no material differences between the undisputed facts of the present case and the undisputed facts involved in the Bigelow case, the legal authorities cited and relied upon in the memorandum opinion in the Bigelow case are applicable to and controlling in the present case. For the same reasons stated in the memorandum opinion in the Bigelow case, the plaintiff is not entitled to

summary judgment in the present case and, accordingly, an order will be entered denying the motion for summary judgment.

This 30<sup>th</sup> day of May, 2000.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

IN RE:

John David Colson and  
Carol Lynn Hinson Colson,

Debtors.

Edwin H. Ferguson, Jr.,  
Trustee in Bankruptcy for  
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Case No. 98-51588C-7W

Adversary No. 99-6018

ENTERED

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ORDER

For the reasons stated in the memorandum opinion filed contemporaneously herewith, the plaintiff's motion for summary judgment is denied.

This 30<sup>th</sup> day of May, 2000.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge